

§ 4.1287

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§ 4.1100, 4.1102 through 4.1115, 4.1121 through 4.1127, and 4.1130 through 4.1141. Unless the Board orders otherwise, the administrative law judge may consider other relevant issues and evidence identified after referral of the case for a hearing.

[75 FR 64669, Oct. 20, 2010]

§ 4.1287 Action by administrative law judge.

(a) Upon completion of the hearing and the incorporation of the transcript in the record, the administrative law judge will issue and serve on the parties, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law and that advises the parties of their right to file exceptions under paragraph (c) of this section; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(b) The administrative law judge will promptly send to the Board the record and:

(1) The proposed findings;

(2) The recommended decision; or

(3) The final decision if a timely notice of appeal is filed.

(c) The parties will have 30 days from service of the recommended decision to file exceptions with the Board.

[75 FR 64669, Oct. 20, 2010]

PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER SECTION 525(e) OF THE ACT

§ 4.1290 Who may file.

(a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in—

(1) A final order being issued by an administrative law judge; or

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(2) A final order being issued by the Board.

(b) [Reserved]

§ 4.1291 Where to file; time for filing.

The petition for an award of costs and expenses including attorneys' fees must be filed with the administrative law judge who issued the final order, or if the final order was issued by the Board, with the Board, within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

§ 4.1292 Contents of petition.

(a) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition—

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(b) [Reserved]

§ 4.1293 Answer.

Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

§ 4.1294 Who may receive an award.

Appropriate costs and expenses including attorneys' fees may be awarded—

(a) To any person from the permittee, if—

(1) The person initiates or participates in any administrative proceeding reviewing enforcement actions upon a finding that a violation of the Act, regulations, or permit has occurred, or that an imminent hazard existed, and the administrative law judge or Board